

## **REMARKS**

Claims 1-19 are pending in the application. It is gratefully acknowledged that Claims 8-10 and 17-19 have been allowed. It is also gratefully acknowledged that the Examiner has found allowable subject matter in Claims 4, 7, 13 and 16.

The Examiner has objected to Claims 1-19 based on informalities. The Examiner has rejected Claims 1-3 under 35 U.S.C. §102(e) as being anticipated by Banister (U.S. Patent 6,876,641). The Examiner has rejected Claims 5, 6, 11, 12, 14 and 15 under 35 U.S.C. §103(a) as being unpatentable over Banister.

Please amend Claims 1, 5, 8, 9, 11, 12, 14, 15, 17 and 18 as set forth herein. No new matter has been added.

Regarding the objection to Claims 1-19 based on informalities, that Examiner states that, due to an alleged typographical error, “determining a minimum data rate” should read, “determining a minimum code rate”. The claims have been amended according to the Examiner’s suggestions.

Based on at least the foregoing, withdrawal of the objection to Claims 1-19 based on informalities is respectfully requested.

As an initial matter regarding the rejections of the claims under §102 and §103, the Examiner has responded to the arguments that pruning is different from puncturing. It was argued in the prior Response that the claims are directed to a device and method for pruning part of the channel-interleaved symbols so that the number of channel-interleaved symbols is equal to the number of transmittable modulation symbols, and that pruning is clearly defined throughout the specification as a discontinuation of symbols at a predetermined time point, which is patentably distinct from puncturing, which is well known as deleting bits throughout a symbol based on a puncturing pattern. The Examiner has responded in the Response to Arguments section on page 2

of the Office Action, "the broadest reasonable interpretation is given to the term 'pruning' and therefore 'pruning' is interpreted as deleting." Applicants respectfully disagree, since it is not reasonable to interpret 'pruning' as merely 'deleting'. MPEP clearly allows the applicant to define terms as set forth in §2111.01 Plain Meaning:

An applicant is entitled to be his or her own lexicographer and may rebut the presumption that claim terms are to be given their ordinary and customary meaning by clearly setting forth a definition of the term that is different from its ordinary and customary meaning(s). See *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994)... Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim. *Toro Co. v. White Consolidated Industries Inc.*, 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999)... Any special meaning assigned to a term "must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention." *Multiform Desiccants Inc. v. Medzam Ltd.*, 133 F.3d 1473, 1477, 45 USPQ2d 1429, 1432 (Fed. Cir. 1998). See also *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999) and MPEP § 2173.05(a).

Since the claims of the present specification use terms that are explicitly defined in the specification, those terms and definitions must control. Any other interpretation would not only be unreasonable but is not permitted.

Based on at least the foregoing, withdrawal of the rejections of the claims under §102 and §103 is respectfully requested.

Regarding the rejection of independent Claim 1 under §102(e), the Examiner states that Banister anticipates each and every feature of the claim. Banister discloses a fast feedback channel with flexible bit reliability for wireless communications.

First, the Examiner in the first Office Action (dated September 20, 2005) issued in this application has already conceded that Banister does not teach or disclose "pruning part of the modulation symbols of the sub-code so that the number of the modulation symbols of the sub-code is equal to the number of transmittable modulation symbols for the time period, if the

number of the modulation symbols of the sub-code is greater than the number of transmittable modulation symbols for the time period” as recited in Claim 1.

Second, Claim 1 recites “determining a minimum code rate by which the number of modulation symbols of the sub-code generated by a predetermined modulation method is equal to or greater than the number of transmittable modulation symbols for the time period”. Claim 1 “determines a minimum code rate”. The Examiner alleges that the apparatus of Banister “determines a minimum code rate” and cites col. 4, lines 17-22, which states:

The result is then decimated (symbols deleted) by decimator 20 to provide a number of symbols equal to one of the allowable quantities of symbols per frame (i.e. rate matching).

Banister determines a number of symbols, not a minimum code rate as recited in Claim 1. Therefore, based on at least this distinction, Banister cannot anticipate Claim 1.

Based on at least the foregoing, withdrawal of the rejection of independent Claim 1 under §102(e) is respectfully requested.

Regarding the rejection of Claims 5, 11 and 14 under §103(a), the Examiner states that Banister renders obvious all of the features of the claims. Applicants respectfully disagree.

Again, each of Claims 5, 11 and 14 recites, in one form or another, pruning part of the modulation symbols of the sub-code so that the number of the modulation symbols of the sub-code is equal to the number of transmittable modulation symbols for the time period, if the number of the modulation symbols of the sub-code is greater than the number of transmittable modulation symbols for the time period. As stated above, the Examiner has already conceded that Banister does not teach or disclose these features.

Second, each of Claims 5, 11 and 14 recites, in one form or another, determining a minimum code rate by which the number of modulation symbols of the sub-code generated by a

predetermined modulation method is equal to or greater than the number of transmittable modulation symbols for the time period. Since, as stated above, Banister determines a number of symbols and does not determine a minimum code rate, Banister cannot anticipate Claims 5, 11 or 14.

Based on at least the foregoing, withdrawal of the rejection of Claims 5, 11 and 14 under §103(a) is respectfully requested.

Finally, it is noted that the features upon which the Examiner bases her allowance of Claims 8-10 and 17-19 are recited in the rejected claims. Therefore, based on the Examiner's allowance of Claims 8-10 and 17-19, Claims 1-7 and 11-16 should also be allowed.

Independent Claims 1, 5, 11 and 14 are believed to be in condition for allowance. Without conceding the patentability per se of dependent Claims 2-4, 6, 7, 12, 13, 15 and 16, these are likewise believed to be allowable by virtue of their dependence on their respective amended independent claims. Accordingly, reconsideration and withdrawal of the rejections of dependent Claims 2-4, 6, 7, 12, 13, 15 and 16 is respectfully requested.

Accordingly, all of the claims pending in the Application, namely, Claims 1-19, are believed to be in condition for allowance. Should the Examiner believe that a telephone conference or personal interview would facilitate resolution of any remaining matters, the Examiner may contact Applicants' attorney at the number given below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul J. Farrell", written over the typed name.

Paul J. Farrell  
Reg. No. 33,494  
Attorney for Applicant

THE FARRELL LAW FIRM  
333 Earle Ovington Blvd., Suite 701  
Uniondale, New York 11553  
Tel: (516) 228-3565  
Fax: (516) 228-8475  
PJF/MJM/dr